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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LEROY GUILLORY et al.,	
Plaintiffs and Appellants,	G053655
v.	(Super. Ct. No. 30-2008-00212410)
MICHELE HILL,	O P I N I O N
Defendant and Appellant.	

Appeal from a judgment of the Superior Court of Orange County, Kim Garlin Dunning, Judge. Affirmed. Requests for judicial notice. Granted.

Quintilone & Associates, Richard E. Quintilone II; Eisenberg Law Firm and Mark W. Eisenberg for Plaintiffs and Appellants.

Lynberg & Watkins, Norman J. Watkins, S. Frank Harrell, and Pancy Lin for Defendant and Appellant.

* * *

This is the second appeal of LeRoy Guillory and 11 other plaintiffs[1] in their civil rights action against defendant Orange County Sheriff's Department Investigator Michele Hill. The lawsuit stems from a police raid and warrant search of a mansion in the aftermath of a Halloween party attended by approximately 1,000 partygoers. (*Guillory v. Hill* (2015) 233 Cal.App.4th 240, 243, 245 (*Guillory I*).) Plaintiffs were present in the mansion after the party ended. (*Id.* at p. 245.) Hill coordinated the search, which sought evidence of illegal gaming. (*Id.* at pp. 243, 246.) The evidence in the first trial showed Hill detained plaintiffs during the search and possibly after the search ended. (*Id.* at p. 244.)

In the first appeal, we held the trial court properly directed a verdict in Hill's favor on all but one of plaintiffs' civil rights claims under United States Code section 1983 (section 1983). (*Guillory I*, *supra*, 233 Cal.App.4th at p. 244).) We reversed the judgment, however, solely on plaintiffs' "prolonged detention" claims. (*Id.* at p. 256.) Specifically, *Guillory I's* disposition stated: "The judgment . . . is reversed as to plaintiffs' claims alleging prolonged detention under section 1983, and is affirmed in all other respects. . . ." (*Guillory I*, at p. 256.)

During the retrial following remand, plaintiffs contended the search ended at 8:30 a.m. Hill asserted the search ended at 2:00 p.m., and the jury agreed. Consequently, the jury awarded damages only to the plaintiffs who were detained past 2:00 p.m. The dollar amounts of the awards were minimal.

In this second appeal, plaintiffs argue the jury should have awarded them damages for their continued detention after the search *reasonably should have ended*. They argue the trial court on remand erred (1) by denying their requests for a jury

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[1] The other plaintiffs are Carl Vini Bergeman, Lorraine Colarossi, Carmine Colarossi, Jennifer Bell, Altan Aksu, David Ryder, John D'Agostino, Kathleen D'Agostino, Scott Deere, Sr., Robert Green, and Darren Johnson.

instruction and expert witness testimony relevant to their damages suffered after the search *reasonably should have ended*, and (2) by instructing the parties to prepare a special verdict form consistent with these rulings.

The law is well-established that a trial court is jurisdictionally bound by a higher court's directions in a remittitur (construed together with the opinion as a whole). (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655 (*Hampton*); *Ducoing Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 313 (*Ducoing*).) As we shall discuss, *Guillory I's* disposition, when construed in light of the opinion as a whole, restricted the trial court's jurisdiction on remand to the issue of plaintiffs' damages suffered *after the search actually ended*.

Plaintiffs also contend the trial court abused its discretion by excluding evidence of their alleged preexisting "eggshell" emotional condition caused by their detention during the search. We find no merit in this contention.

Consequently, we affirm the judgment in its entirety.

I

FACTUAL AND PROCEDURAL BACKGROUND AFTER REMAND

A. Bench Trial on Hill's Affirmative Defense

Following remand, the parties stipulated that Hill's qualified immunity defense was a question of law for the court. At the November 30, 2015 bench trial on this issue, plaintiffs' counsel in closing argument argued that Hill was "seeking a finding of qualified immunity to shield her from the liability created by her prolonged detainment of the plaintiffs once the warrant backed search at the . . . residence *ended*." (Italics added.) Similarly, he argued: "[T]he Court of Appeal made clear under the *Mena* [*Muehler v. Mena* (2005) 544 U.S. 93 (*Mena*)] and *Summers* [*Michigan v. Summers* (1981) 452 U.S. 692 (*Summers*)] decision[s] that the law was very clear, that a prolonged detainment *after a search* for purposes of conducting interviews . . . was unlawful. . . ."

(Italics added.) The court found Hill had failed to meet her burden to establish a qualified immunity defense.

B. Plaintiffs' Proffered Special Instruction No. 1 and Expert Witness Testimony

The trial court and counsel for both parties discussed plaintiffs' proposed Special Instruction No. 1, which read: "Prolonged Detention. While a warrant-backed search is being conducted, persons found on site may be detained for the duration of the search provided the search is not unnecessarily prolonged beyond the time reasonably required to complete the search."

The court noted plaintiffs' counsel had argued "yesterday" that his expert might testify the search "took too long." The court stated it had read the expert's deposition and did "not see[] this as an issue in this case."

Defense counsel agreed, explaining he had *not* asked the expert witness about this issue during the deposition because "the Court of Appeals says it's not an issue of the case."[2]

Plaintiffs' counsel responded by noting defense counsel had asked the expert at the end of the deposition whether there was "anything [they hadn't] cover[ed]. And [the expert] said, 'Yes. I've got opinions and conclusions with reference to the search itself and whether or not it was reasonably concluded in a reasonable period of time.'" But defense counsel "didn't choose to further explore that."

The trial court stated: "We are dealing with a detention after . . . a legal search was completed. That's what these issues are. . . ." "[T]he jury needs to understand what occurred during the search was perfectly legal and is not part of this lawsuit." "So anything . . . that happened before [the search ended] is completely off the table." The court concluded the expert's "opinion about how the search itself was

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[2] Although the reporter's transcript attributes this statement to plaintiffs' counsel, it appears clear from the context and content of the statement that defense counsel was the speaker.

conducted" was irrelevant. The court therefore refused to give plaintiffs' proposed Special Instruction No. 1 "as [] currently drafted" because the court was not "supposed to be trying [this issue] in this phase."

In closing arguments to the jury, plaintiffs' counsel argued the search ended at 8:30 a.m., while defense counsel argued the search concluded at 2 p.m.

C. The Jury's Special Verdict

In a special verdict, the jury found the search ended at 2 p.m. Because Hill had released three plaintiffs before 2 p.m. on the day of the search, the jury found those three plaintiffs had suffered no damage. The jury found each remaining plaintiff had suffered damage in an amount ranging, respectively, from $200 to $3000. The trial court entered judgment in Hill's favor against the three plaintiffs to whom the jury awarded no damages. As to the remaining nine plaintiffs, the court entered judgment in their favor "for the amounts awarded by the jury."

II

DISCUSSION

A. Guillory I's *Remittitur Restricted the Issue on Remand to Plaintiffs' Damages Suffered After the Search Ended*

Guillory I's disposition stated: "The judgment entered on the trial court's directed verdict is reversed as to *plaintiffs' claims alleging prolonged detention under section 1983*, and is affirmed in all other respects." (*Guillory I*, *supra*, 233 Cal.App.4th at p. 256, italics added.)

The primary issue on this appeal is whether "prolonged detention" — within the meaning of *Guillory I's* disposition — includes the detention of plaintiffs *beyond the time reasonably required to complete the search*, or is instead limited to their detention *after the search ended*. The trial court adopted the latter interpretation and consequently refused plaintiffs' proffered jury instruction and expert testimony concerning when the search reasonably should have ended.

In determining whether the trial court acted properly, we must ascertain the scope of its jurisdiction as established by *Guillory I's* disposition and construed in light of the opinion as a whole.[3] "When there has been a decision upon appeal, the trial court is reinvested with jurisdiction of the cause, but only such jurisdiction as is defined by the terms of the remittitur." (*Hampton*, *supra*, 38 Cal.2d at p. 655.) The "remittitur directions are contained in the dispositional language of" the reviewing court's opinion. (*Ayyad*, *supra*, 210 Cal.App.4th at p. 859.) "The issues the trial court may address in the remand proceedings are therefore limited to those specified in the reviewing court's directions, and if the reviewing court does not direct the trial court to take a particular action or make a particular determination, the trial court is not authorized to do so." (*Id.* at pp. 859-860.) "Whether the trial court has correctly interpreted an appellate opinion is an issue of law subject to de novo review. In interpreting the language of a judicial opinion, the appellate court looks to the wording of the dispositional language, construing these directions 'in conjunction with the opinion as a whole.'" (*Ducoing*, *supra*, 234 Cal.App.4th at p. 313.)

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[3] Plaintiffs' "opening brief points to a number of claimed errors in the trial court's [rulings], but [fails to] acknowledge[] the trial court's principal rationale, which was that our remittitur in the prior appeal deprived it of jurisdiction [on the issue of the search's reasonable duration]. While [plaintiffs'] opening brief . . . ignores this issue, we find it dispositive." (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 858 (*Ayyad*).)

Instead, plaintiffs argue that *Guillory I's* holding "operated to leave Plaintiffs in exactly the same procedural trial posture they occupied at the time the directed verdict was granted . . . ." They conclude this court "remanded the case with full entitlement by Plaintiffs to present all relevant evidence concerning their claims of both HILL's prolonged detention liability as well as [corresponding] damages . . . ." For this proposition, plaintiffs rely on two quotations from *Ferran v. Mulcrevy* (1935) 9 Cal.App.2d 129, 130-131, from which plaintiffs omit critical language limiting the application of those quotes to reversals of judgments notwithstanding the verdict, which resulting in the court reinstating the judgment on the verdict. (*Davcon, Inc. v. Roberts & Morgan* (2003) 110 Cal.App.4th 1355, 1367-1368.)

As we explain, no fair reading of *Guillory I* supports plaintiffs' contention the scope of the retrial, as authorized by the opinion's remittitur, extended to their detention after the search reasonably should have ended.

Plaintiffs contend *Guillory I* "*held* that . . . if Hill's detention of Plaintiffs lasted longer than was reasonably required to complete her warranted search . . . , and without further independent Fourth Amendment justification, Hill would enjoy no qualified immunity . . . for unconstitutionally prolonging [their] detentions . . . ." To support their contention, plaintiffs rely *solely* on the following passage in *Guillory I*: "[A]n occupant's 'lawful seizure' during a warrant-backed search '"can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."'" (*Guillory I*, *supra*, 233 Cal.App.4th at p. 250, quoting *Mena*, *supra*, 544 U.S. at p. 101.) (In this opinion, we refer to this sentence as the *Mena* quote.)[4]

The *Mena* quote appears only once in *Guillory I*, and then only in passing. It constitutes *Guillory I's* lone reference to the issue of how long a search should reasonably take. For example, *Guillory I* provides no guidance on the factors a court must consider in determining a search's reasonable duration. *Guillory I* simply does not discuss the concept at all.

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[4] The complete passage in *Mena* reads as follows: "Our recent opinion in *Illinois v. Caballes* [(2005) 543 U.S. 405] is instructive. There, we held that a dog sniff performed during a traffic stop does not violate the Fourth Amendment. We noted that a lawful seizure 'can become unlawful if it is prolonged beyond the time reasonably required to complete that mission,' but accepted the state court's determination that the duration of the stop was not extended by the dog sniff." (*Mena*, *supra*, 544 U.S. at p. 101.) In *Caballes*, the Supreme Court did not expand on the notion of "the time reasonably required to complete that mission." (*Caballes*, at pp. 407-408.) Rather, *Caballes* held a "dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." (*Caballes*, at p. 410.)

In contrast, *Guillory I's* introduction, factual recitation, discussion, and analysis focus on when the search actually ended. We quote from *Guillory I* at length to demonstrate this single-minded focus.

Thus, *Guillory I's* introduction summarized the prolonged detention issue as follows: "[P]laintiffs contend Hill violated their right to be free from unlawful seizure by prolonging their detention *beyond the conclusion of the search* of the residence. Hill questioned each of the plaintiffs before deciding they were free to go, but according to plaintiffs, the jury could infer the officers had *concluded the search* of the premises well before Hill began her interrogations and later released plaintiffs. Plaintiffs contend nothing justified their detention beyond the *end of the search*." (*Guillory I*, *supra*, 233 Cal.App.4th at p. 243, italics added.) *Guillory I's* introduction then articulated this court's holding as follows: "[B]ecause as a factual matter a jury reasonably could conclude *the search had ended* before Hill's questioning began, the trial court erred in granting the directed verdict. We therefore reverse the directed verdict as to plaintiffs' section 1983 claims based on the prolonged detention of the plaintiffs." (*Id.* at p. 244, italics added.)

Similarly, *Guillory I's* factual recitation contains the following detailed description of when the search ended: "The trial court omitted in its minute order any discussion of *when the warrant search ended*. According to plaintiffs, the *search concluded by 7:00 a.m.*, i.e., within about two hours of SWAT's initial entry into the home. Plaintiffs piece together the testimony of two [Orange County Sheriff's Department] investigators to support their inference *the search ended at 7:00 a.m.*" (*Guillory I*, *supra*, 233 Cal.App.4th at pp. 246-247, italics added.) Based on the investigators' testimony, "plaintiffs conclude that . . . *the search must have been completed*" by 7:00 a.m. (*Id.* at p. 247, italics added.) "According to defendant, the search for physical evidence did not begin until about 7:00 a.m. and, '[d]ue to the size of the house and the array of objects involved, some large and some very small, it took the

investigative team approximately *seven hours to complete the search*.' As defendant notes, 'The warrant called for a search to locate a variety of items, [including] slot machines, money, financial documents, computer based information, business records, and other evidence of illegal gambling.' Even assuming a seven-hour search, however, defendant concedes the interviews she conducted with the plaintiff detainees did not begin until 'shortly *after the conclusion of the physical search.*'" (*Ibid.*, italics added.)

Next, *Guillory I's* discussion expounded at length on the issue of when the search ended. Indeed, the *Mena* quote lies buried in *Guillory I's* lengthy discussion of the law governing an officer's authority to detain occupants during a warrant-based search of premises: "Plaintiffs contend the trial court improperly granted a directed verdict on their prolonged detention claim. We agree. Defendant mistakenly relies on law enforcement's categorical authority to detain the occupants at a residence subject to a search warrant, without recognizing the very cases establishing this authority also limit the detention to *the duration of the search*. For example, the seminal high court case, [*Summers*], explained that 'a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises *while a proper search is conducted*.' . . . [¶] In [*Mena*], the high court . . . reversed the Ninth Circuit's conclusion in that case that 'the officers should have released Mena [an occupant caught up in the execution of a search warrant] as soon as it became clear that she posed no immediate threat.' [Citation.] To the contrary, her 'detention for *the duration of the search* was reasonable under *Summers* because a warrant existed to search [the subject property] and she was an occupant of that address *at the time of the search*.' [Citation.] But the court also stated explicitly what was implicit in *Summers*: an occupant's 'lawful seizure' during a warrant-backed search '"can become unlawful if it is prolonged **beyond the time reasonably required to complete that mission**."' (*Guillory I*, *supra*, 233 Cal.App.4th at pp. 249-250, original italics, and italics and bolding added.)

Guillory I made clear the issue presented concerned the detention of the plaintiffs after the warrant search concluded. We explained: "Here, the specific conduct at issue is Hill's decision to hold plaintiffs for questioning well beyond *the end of the physical search of the premises*. A reasonable trier of fact could conclude on the evidence presented that *the warrant search ended* before Hill began questioning plaintiffs. Indeed, she testified that was her plan: *to conclude the search* and then interview the detainees. Accordingly, her own testimony indicated the detainee interviews commenced *after the search was completed*. Hill did not conduct her first interview until 2:16 p.m. Therefore, a reasonable fact finder could conclude *the search ended* shortly before that time, or *ended* much earlier at 7:00 a.m. as plaintiffs assert." (*Id.*, at p. 251, italics added.) "[T]he limiting language in *Summers* and *Mena* clearly established that detaining occupants *beyond the end of a warrant-backed search* is unlawful, absent independent Fourth Amendment justification." (*Guillory I*, at p. 252, original italics and italics added.) "*Mena*, *Summers*, and [*Dawson v. City of Seattle* (2006) 435 F.3d 1054, 1066] all predated Hill's search, and clearly established that while questioning detainees *during* a warrant search may be lawful, the detainees may not be held *beyond the end of the search* absent independent justification." (*Guillory I*, at p. 252, italics added.) Hill "did not begin interviewing any of the plaintiff detainees until 2:16 p.m., and a reasonable fact finder . . . could conclude *the search ended* shortly before that time, *or ended much earlier* at 7:00 a.m. as plaintiffs assert." (*Id.*, at pp. 255-256, original italics and italics added.) "It was therefore improper for the trial court to grant a directed verdict disposing of plaintiffs' prolonged detention claims." (*Id.*, at p. 256, italics added, fn. omitted.)

Thus, *Guillory I* focused exclusively on the actual end of the search, and merely mentioned the *Mena* quote in passing. This accords with the way plaintiffs presented their case in *Guillory I* — they never raised, much less discussed, the issue of

the search's reasonable duration. In their opening brief in the first appeal,[5] plaintiffs mentioned the *Mena* quote in passing a few times, but dedicated their argument to their position the search ended at 7:00 a.m. They devoted 16 pages of their factual recitation to their proffered evidence showing (1) the search ended at 7:00 a.m., and (2) Hill restrained plaintiffs "for as long as 12 hours after" the end of the search. Correspondingly, in the brief's discussion section, plaintiffs argued (1) the search ended at 7:00 a.m., and (2) Hill unreasonably detained each plaintiff for between one and a half to 12 hours after the search ended. Plaintiffs' brief did include the *Mena* quote twice in a single two-paragraph passage, thereby paying lip service to the issue of a search's reasonable duration. But their brief contains *no* discussion, argument, or analysis of how much time would reasonably be required to search a 21,000 square foot residence (*Guillory I*, *supra*, 233 Cal.App.4th at p. 244) for evidence such as money, financial documents, computer based information, and business records, in the aftermath of a party attended by 1,000 partygoers.

In sum, the phrase "prolonged detention" in *Guillory I's* disposition can only be interpreted, in light of the opinion as a whole, to refer to plaintiffs' detention after the search ended. The trial court properly denied plaintiffs' requests to litigate an issue outside the court's jurisdiction on remand.

B. Plaintiffs Forfeited Their Contention the Trial Court Should Have Admitted Evidence of Their Allegedly Traumatic Detention During the Search

Plaintiffs contend the trial court abused its discretion by excluding evidence of the alleged trauma they suffered *during the search*. They argue this trauma left them in an "eggshell" emotional condition which aggravated their mental pain (and damages) during the postsearch detention. Relying on CACI No. 3928 [Unusually Susceptible

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[5] We grant plaintiffs' motion for judicial notice of their opening brief in the first appeal. (Evid. Code, § 452, subd. (d).)

Plaintiff], they assert the court should have admitted their testimony about their detention during the search, which would have included descriptions of their forcible seizure by the special weapons and tactics team (SWAT); their unheeded requests for food, water, and restroom visits; their wrist restraints; and other discomforts.

Hill argues plaintiffs waived this claim by failing to mention it to the trial court. Plaintiffs concede they failed to raise the issue below, but contend the court's rulings made any request to admit the evidence futile.

Generally, a reviewing court will not consider a claim of an erroneous ruling "where an objection could have been, but was not[,] raised below." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 826.) "'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider.'" (*Ibid.*) "Bait and switch on appeal not only subjects the parties to avoidable expense, but also wreaks havoc on a judicial system too burdened to retry cases on theories that could have been raised earlier." (*JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178.)

This rule applies equally to evidentiary rulings. Our Supreme Court has "established the general rule that trial counsel's failure to object to claimed evidentiary error on the same ground asserted on appeal results in a forfeiture of the issue on appeal." (*People v. Dykes* (2009) 46 Cal.4th 731, 756.)

But plaintiffs contend that Evidence Code section 354, subdivision (b), creates an exception applicable here. Under Evidence Code section 354, a judgment may not be reversed based on the erroneous exclusion of evidence unless the error is prejudicial and "it appears of record that: (a) The substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means; [or] (b) The rulings of the court made compliance with subdivision (a) futile . . . ." Plaintiffs argue they were not required to inform the trial

court of their "eggshell condition" argument, or even to request the court to admit the evidence, because to do so would have been futile. They rely on *Beneficial etc. Ins. Co. v. Kurt Hitke & Co.* (1956) 46 Cal.2d 517, 522, which concluded that an offer of proof was "not a prerequisite to raising the question on appeal" where the trial court declared "an entire class of evidence to be inadmissible."

The record does not support plaintiffs' assertion that raising the issue below would have been futile. The trial court never ruled on plaintiffs' "eggshell condition" issue because plaintiffs never mentioned it. Rather, the court — while considering plaintiffs' proffered Special Instruction No. 1 and expert testimony on whether the search took too long — explained to counsel that what happened during the search was "off the table," but what happened after the search was "on the table." This "ruling" was consistent with *Guillory I's* affirmance of the judgment against plaintiffs on their nonprolonged detention claims, including those based on "the SWAT team and other officers' allegedly excessive force in entering and securing the premises . . . [and] restraining the detainees with excessive force before Hill questioned them . . . ." (*Guillory I, supra,* 233 Cal.App.4th at p. 244.) At this point, plaintiffs could have requested the trial court to admit evidence relevant to their preexisting "eggshell condition," which would have allowed the court to consider whether the requested evidence was admissible for this limited purpose.[6] The absence of this request deprived the court of any opportunity "to understand the impact of its ruling." (*Gordon v. Nissan Motor Co.* (2009) 170 Cal.App.4th 1103, 1114.)

[6] We express no opinion on the merits of plaintiffs' "eggshell condition" claim, which might appear, at first blush, to be a backdoor attempt to relitigate the issues already finalized against them.

In sum, the trial court acted within its discretion in excluding the evidence. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281 [trial court's evidentiary rulings reviewed for abuse of discretion].)

III

DISPOSITION

The judgment is affirmed.[7] Hill is entitled to costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

GOETHALS, J.

[7] Consequently, we do not address Hill's cross-appeal, which was conditional on this court's remanding the case.